

# 28<sup>TH</sup> BOARD OF REPRESENTATIVES CITY OF STAMFORD

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August 15, 2011

Michael Larobina, Esq.  
Director of Legal Affairs  
City of Stamford  
888 Washington Blvd.  
Stamford, CT 06901

Re: Barnes v. Tarzia, et al., Scacco v. Tarzia, et al., and Orgera v. Tarzia, et al.

Dear Director Larobina:

In the August 9, 2011 Stamford Advocate, you indicated that the City intends to hire outside counsel to represent Joseph Tarzia, former Board of Finance member, in three lawsuits filed against him by three individuals who are employees of the City. The Advocate article states that you compared the actions against Mr. Tarzia to an action brought against a police officer who is being sued by a woman who alleges that the officer punched her and then falsely arrested her. We believe that your analogy is completely inapposite and that the conclusion reached to provide counsel to Mr. Tarzia at taxpayer expense is incorrect and should be reconsidered.

The relevant facts as we understand them are as follows:

In April 2010, Ms. Tania Barnes filed an ethics complaint against Mr. Tarzia. In May 2010, Mr. Michael Scacco filed an ethics complaint against Mr. Tarzia. Probable cause was found against Mr. Tarzia in both the Barnes and Scacco ethics complaints. Hearings in the complaints against Mr. Tarzia were scheduled for mid-October 2010. On October 7, 2010, Mr. Tarzia's attorney, Joseph Sargent, filed a federal lawsuit in the United States District Court located in Bridgeport (the "Federal Complaint"). The Federal Complaint listed Joseph Tarzia as plaintiff and named the City of Stamford, the Board of Ethics, Mr. Ernie Orgera, Ms. Barnes, Michael Docimo, and Mr. Scacco as defendants.

The Federal Complaint was filed by Mr. Tarzia as an individual, not as a member of the Board of Finance. To the best of our knowledge, the Federal Complaint was never publicly discussed by the Board of Finance and was not authorized by the Board of Finance. Indeed, the Board of Finance lacks authority under the City Charter to commence such a lawsuit.

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The Federal Complaint sought a preliminary and permanent injunction against the City and the Board of Ethics to prevent the enforcement of provisions of the Code of Ethics. It also sought a declaration that portions of the Ethics Code were unconstitutional. The Federal Complaint also demanded money damages, as well as costs and attorneys' fees.

The request for injunctive relief was denied by the federal court, and the Barnes ethics complaint against Mr. Tarzia was heard by the Ethics Board beginning on October 19, 2010. Hearings in the Barnes ethics complaint continued in January and February 2011. After numerous witnesses contradicted Mr. Tarzia's sworn statements regarding a disciplinary action against a city employee, Mr. Tarzia's attorney approached your office regarding a settlement of the pending ethics complaints, as well as the Federal Complaint. After negotiations with your office, Mr. Tarzia agreed to withdraw the Federal Complaint and resign from the Board of Finance in exchange for the dismissal of the pending ethics complaints and a payment of \$45,000 in taxpayers' funds to Mr. Tarzia for attorneys' fees. You discussed this settlement with leadership of the Board of Representatives and most (if not all) members of the Board of Finance. It was generally agreed that this settlement would end up saving considerable taxpayer funds since the completion of the ethics hearings and any follow-up would almost certainly end up costing the citizens of Stamford substantially more than the \$45,000. Pursuant to the terms of the agreement (which we believe was verbal), Mr. Tarzia resigned from the Board of Finance on February 18, 2011 and the Federal Complaint was dismissed with prejudice on March 2, 2011 after Mr. Tarzia's attorney filed a stipulation of voluntary dismissal on February 28, 2011.

The Orgera complaint, the Scacco complaint and the Barnes complaint all seek damages from Mr. Tarzia and his attorney for vexatious litigation related to the Federal Complaint commenced by Mr. Tarzia against the City, the Ethics Board, and the three individuals, as well as Mr. Docimo. The Orgera complaint, the Scacco complaint, and the Barnes complaint do not seek damages against the City, the Board of Finance, or Mr. Tarzia as a member of the Board of Finance. All three complaints seek damages from Mr. Tarzia and Mr. Sargent as individuals.

The relevant state statute regarding protection of municipal officers and employees from damages suits is C.G.S. §7-101a which provides in relevant part:

- (a) Each municipality shall protect and save harmless any municipal officer, whether elected or appointed, of any board, committee, council, agency or commission. . . or any municipal employee, of such municipality from financial loss and expense, including legal fees and costs, if any, arising out of any claim, demand, suit or judgment by reason of alleged negligence, or for alleged infringement of any person's civil rights, on the part of such officer or such employee while acting in the discharge of his duties.

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- (b) In addition to the protection provided under subsection (a) of this section, each municipality shall protect and save harmless any such municipal officer or municipal employee from financial loss and expense, including legal fees and costs, if any, arising out of any claim, demand or suit instituted against such officer or employee by reason of alleged malicious, wanton or willful act or ultra vires act, on the part of such officer or employee while acting in the discharge of his duties. In the event such officer or employee has a judgment entered against him for malicious, wanton or willful act in a court of law, such municipality shall be reimbursed by such officer or employee for expenses it incurred in providing such defense and shall not be held liable to such officer and employee for any financial loss or expense resulting from such act.

Based on the comments reported in the press, we assume that you are basing your decision to pay for Mr. Tarzia's legal defense on the provisions of §7-101a (b). Our concern in this regard is that Mr. Tarzia did not file the Federal Complaint "while acting in the discharge of his duties." The three vexatious litigation complaints filed against Mr. Tarzia are based wholly or primarily on the Federal Complaint. As noted previously, the Federal Complaint was filed by Mr. Tarzia as an individual. It was not filed by Joseph Tarzia as chair of the Board of Finance. It was not discussed or approved by the Board of Finance. It was not cleared with the Office of the Corporation Counsel. If Mr. Tarzia had been successful in the Federal Complaint and had received the money damages he sought, those damages would have been Mr. Tarzia's property and not the City's.

Mr. Tarzia and his attorney made a decision to bring a private lawsuit against the City and four individuals. Now taxpayers are being asked to pay the bills for Mr. Tarzia's defense in actions related to that Federal Complaint. When you compared this situation to that of a Stamford police officer who allegedly exceeded his authority and violated department policy, I believe you have a faulty analogy. The officer in question was in uniform and on duty. There is no doubt that the officer was "acting in the discharge of his duties" while Mr. Tarzia appears to have been acting for his sole benefit and not in the discharge of his duties when he brought the Federal Complaint. A more apt analogy would be a situation in which an elected member of the Board of Representatives or Board of Finance gets into a fistfight on a weekend. Such a member clearly would not be deemed to be "acting in the discharge of his duties." In such a situation, the City would not be expected to pay for the member's legal defense or indemnify the member for any damages found.

Before asking taxpayers to foot the bill for this action, we would encourage you to seek either a court ruling or an opinion from qualified, independent outside legal counsel as to whether Mr. Tarzia's Federal Complaint constituted an act "in the discharge of his duties." If either a court

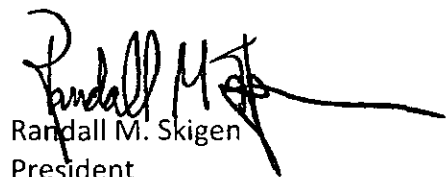
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or outside counsel determines that Mr. Tarzia is entitled to legal representation at the taxpayers' expense, we would encourage you to seek an additional appropriation for such costs since we do not believe that your budget for this year anticipated funding for outside counsel for this situation.

Very truly yours,



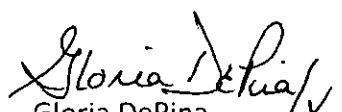
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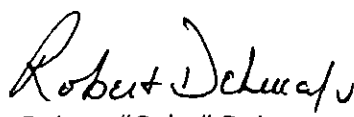
Elaine Mitchell  
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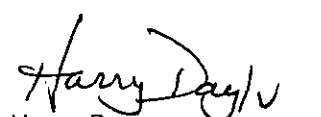
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Deputy Majority Leader



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Deputy Majority Leader



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Harry Day  
Deputy Minority Leader



Mary Fedeli  
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